IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.2046 of 2007

Sanjay M. Shetty — Petitioner
Vs.
State of Maharashtra & anr. — Respondents

Mr.Rahul S. Kate for petitioner.
Mr.A.S.Shitole, APP for State.

CORAM: B.H.MARLAPALLE, J.

November 1, 2007.

P.C.

. Heard Mr.Kate, the learned counsel for the petitioner who is the accused in Summary Criminal Case No.267/2005 filed under Section 138 of the Negotiable Instruments Act, 1881.

. It appears that while the depositions of the complainant by way of his cross-examination on the affidavit filed as examination-in-chief were recorded, an application at Exhibit 37 came to be filed by the complainant who sought leave to re-examine him under Section 311 of Cr.P.C. This was also at the stage when the statement of the accused under Section 313 of Cr.P.C. was recorded at Exhibit 25 and another witness by name Ramu Bhandari was examined by the defence. This application at Exhibit

37 was accompanied by a list of documents viz. the original dishonoured cheque, the Bank's memo intimating the dishonour of the cheque, copy of the legal notice issued under Section 138(b) of the Act and the postal acknowledgement.

. The application came to be allowed by the impugned order dated 8/10/2007 by the learned Judicial Magistrate, First Class at Chandgad.

. The learned Magistrate noted that these original documents were not submitted along with the complaint nor was there any attempt made to submit the same along with the affidavit in examination-in-chief filed by the complainant. Nonetheless these being relevant documents and some of them being the public documents like the Bank slip and the postal receipt and the dishonoured cheque was issued by the accused himself, the trial Court thought it fit to allow the application in the interest of justice and for a fair trial.

. It is obvious that the learned Advocate for the complainant had failed to take appropriate steps when the complaint was filed or when his affidavit in

examination-in-chief was filed to bring these documents on record and having realised this serious error, the application was made invoking the powers under Section 311 of Cr.P.C. for recalling the complainant for his re-examination. Undoubtedly, the powers under Section 311 of Cr.P.C. could be invoked at any time before the final judgment is rendered and the reasoning set out by the learned Magistrate in support of the impugned order cannot be termed as perverse or patently erroneous and hence no interference is called for in the same in this petition under Article 227 of the Constitution.

. Petition is rejected. Trial of the complaint is expedited.

. Writ to go to the trial Court forthwith.

(B.H.MARL